

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

PACIFIC GAS AND ELECTRIC COMPANY

Employer

and

Case 32-RC-213182

**ENGINEERS AND SCIENTISTS OF
CALIFORNIA, LOCAL 20, IFPTE, AFL-CIO/CLC**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks a self-determination election under the Board's *Armour-Globe*¹ doctrine to determine whether a group of 36 IT project managers from the Employer's Infrastructure and Operations subgroup should be included in an existing bargaining unit of over 3,000 employees, which includes some but not all technical employees, and some but not all professional employees, who are currently represented by the Petitioner. The Employer maintains that the voting group sought by the Petitioner is not appropriate because it leaves out 43 IT Project Managers from its Business Technology and Security subgroups, which should be included.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions during the hearing. As explained below, based on the record and relevant Board law, I find that the employees in the petitioned-for voting group share a community of interest with the existing bargaining unit and that they constitute an identifiable, distinct segment of the unrepresented employees. I therefore conclude that it would be appropriate to hold a self-determination election among the employees in the petitioned-for voting group, and I am directing a self-determination election therein.

STATEMENT OF FACTS

The Employer is a utility company headquartered in San Francisco, California, which delivers gas and electricity to residential and commercial customers located in Northern and Central California. The parties have had a continuous bargaining relationship since at least 1952, when the Petitioner was certified as the representative of a unit of employees in classifications not specified in the record. Since 1952, at least 26 groups of employees in multiple professional and technical classifications have been added to the existing bargaining unit either through Board-conducted elections or card check recognition. Currently, the Petitioner represents an existing unit of over 3,000 of the Employer's employees working in hundreds of separate job classifications in approximately 100 facilities throughout California. Among the extensive classifications included in the existing unit are approximately 190 project managers from various departments who are not involved in the dispute underlying the instant petition, which involves

¹ *Armour & Co.*, 40 NLRB 1333 (1942), and *Globe Machine Stamping Co.*, 3 NLRB 294 (1937).

project managers in the Employer's Information Technology and Supply Chain Department ("IT Department").

The IT Department contains three subgroups: Infrastructure and Operations ("I&O"), Business Technology ("BT"), and Security. The Employer refers to all project managers who work in the IT Department as "IT project managers." The Petitioner's proposed voting group contains 36 permanent IT project managers who work in the I&O subgroup ("I&O project managers").² The Employer contends that the proposed voting group is inappropriate because it does not also include 43 IT project managers from the BT and Security subgroups.

The IT Department is headed by Chief Information Officer Karen Austin. Beneath CIO Austin is Vice President Val Bell, and beneath Vice President Bell is Senior Director David Wright. Senior Director Wright has management oversight over telecommunications engineers who are members of the existing unit. Also reporting to Senior Director Wright is Christopher Vana, the Director of Infrastructure Operations, Project and Program Delivery. Below Director Vana are Senior Managers Steven Lal and Sara Von Schilling. Lal and Von Schilling manage, among other employees, the four field area supervisors to whom the I&O project managers directly report. I&O project managers work in four "field areas" known as the Field Central Area, the Field Northern Area, the Field Southern Area, and the Data Center. Each field area is separately supervised.

All IT project managers are compensated within the same salary ranges or "pay bands." Like all employees companywide, all IT project managers share common benefits and are subject to the same employment rules and policies. All IT project managers share the same basic preferred qualifications including a Bachelor's Degree in computer science, business, or engineering; and "Project Management Professional" certification from the Project Management Institute. All IT project managers are invited to attend the same basic training, known as "Boot Camp." All IT project managers receive the same basic safety training, although some project managers require additional training specific to the work they are performing in their various subgroups. For example, project managers who do substation work in electric transmission receive North American Electric Reliability Corporation (NERC) certification. I&O project managers participate in online training courses which are moderated by members of I&O management and are not attended by other project managers. IT project managers use many software tools in common, including PPMC, a project management tool; SharePoint, which contains links to tools and documents used by project managers in different departments and subgroups; EDRS, a document approval system; and Ariba, which is used to procure project materials.

Director Vana testified that all of the Employer's project managers companywide perform the same essential functions of managing the schedule, scope, and budget of their assigned projects. Project managers are responsible for tracking project spending, ensuring that

² The Petitioner is not seeking to represent, nor is the Employer seeking to add, contractors who perform I&O project manager functions, of whom the Employer employs approximately 30 to 40 at any given time.

changes to project scope are approved and documented, scheduling work on projects, and ensuring the quality of the work performed on their projects.

Project managers in the I&O subgroup work on large construction projects involving the installation of telecommunications hardware. For example, I&O project manager Albert Badalyan, who works in the Field Southern Area, testified that he recently worked on a project connecting a solar farm to the Employer's power grid. Badalyan testified that a typical week for him will start with a meeting with portfolio and program managers to provide updates on project status and change requests. He communicates with project sponsors regarding budgeting and scheduling matters and follows up with the engineering team to ensure that projects will be completed on time. During site visits, he works with telecommunications engineers and construction leads, who are members of the existing unit, to confirm the scope and sequencing of work that needs to be performed. Badalyan testified that he spends about 30 to 40 percent of his time working at substations and other sites in the field, often in remote locations. I&O project managers are required to wear fire retardant gear when they work in the field in order to be protected from electrical sparks and arc flashes.

Badalyan testified that there is regular interaction among I&O project managers in the various field offices. I&O project managers participate in weekly "PCR approval calls" to discuss project changes with Director Vana and managers and supervisors from the I&O subgroup. Those meetings are not attended by BT or Security project managers. I&O project managers also have contact when they occasionally co-manage projects with project managers from other offices or hand off projects to project managers from other offices.

The record reflects that I&O project managers have regular interaction with unit employees including telecommunications engineers, design drafters, and construction leads. Telecommunications engineers and design drafters work together to create construction packages and detailed drawings for a project, and construction leads are responsible for managing and completing the construction work. Badalyan testified that I&O project managers have daily contact with telecommunications engineers and design drafters. They also attend regular team meetings with telecommunications engineers, design drafters, and construction leads. Badalyan testified that those meetings sometimes include transmission line project managers and substation project managers, who are also unit members. I&O project manager Marco Luna also testified that he has daily interaction with telecommunications engineers and design drafters, who work on the same floor as him at the Employer's facility in Fresno, California. Luna testified that the construction leads work in a separate facility where he travels approximately once per week to have face-to-face meetings to discuss projects. Luna also testified that he spends 30 to 40 percent of his time in the field, where he has pre-construction meetings with construction leads and telecommunications engineers.

The testimony of Badalyan and Luna was corroborated by telecommunications engineer Joaquin Moreno, who testified that he interacts with I&O project managers on a daily basis to discuss scheduling matters. Moreno also testified that he visits work sites with I&O project managers to go over engineering project details, and occasionally has face to face project meetings with them offsite. Moreno further testified that he shares documents with I&O project

managers in SharePoint. Moreno testified that he does not interact with BT or Security employees on a regular basis.

No BT or Security project managers testified during the hearing, and the record does not contain details regarding their duties and functions. Director Vana testified that in the past year, project managers among the various IT subgroups have worked together on several projects. Director Vana testified that on a server upgrade project, I&O and BT project managers worked together. Director Vana also testified that on a disaster recovery project, I&O project managers worked with members of the BT subgroup. He further testified that on a project known as the Feather River Project, I&O project managers provided support to the BT subgroup. Director Vana did not provide specific testimony regarding the number of project managers involved in those projects, or whether there was any interaction among the project managers from the different subgroups when they are involved in the same projects. I&O project managers Badalayan and Luna both testified that they do not interact with, or even know, any BT or Security project managers.

Director Vana testified that he was aware of two incidents of interchange between I&O and the other IT subgroups: one in which project manager Lesley Munoz, who was a contractor, moved from the I&O subgroup to the Security subgroup; and one in which project manager Mai Tuyen-Calapini moved from the I&O subgroup to the Security subgroup. The record does not reflect when those transfers took place.

POSITIONS OF THE PARTIES

The Petitioner contends that the petitioned-for voting group shares a community of interest with the existing unit because they are functionally integrated with telecommunications engineers and design drafters. The Petitioner further contends that the petitioned-for voting group constitutes a distinct identifiable segment of the IT project managers because they are separately supervised from and do not interact or interchange with the subgroups of employees whom the Employer seeks to add.

For its part, the Employer maintains that the petitioned-for voting group is inappropriate under *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), because the proposed voting group does not share a community of interest that is sufficiently distinct from the remainder of the IT project managers. The Employer further argues that that under *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973), a systemwide presumption applies. The Employer contends that IT project managers constitute a unique subset of all of the Employer's project managers and that the IT project managers should not be split apart because all IT project managers share identical job responsibilities and job descriptions regardless of the subgroup in which they work.

ANALYSIS

Under the Board's *Armour-Globe*³ doctrine, employees sharing a community of interest with an already represented unit of employees may vote whether they wish to be included in the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). An incumbent union may petition to add unrepresented employees to its existing unit through an *Armour-Globe* election if the employees sought to be included (1) share a community of interest with unit employees and (2) "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

I first address whether employees in the proposed voting group share a community of interest with the existing unit. In determining whether a group of employees shares a community of interest, the Board considers whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002).

Applying the factors listed above, I find that employees in the proposed voting group share a community of interest with the existing unit for the following reasons. First, the record establishes that employees in the proposed voting group are functionally integrated with a subset of unit employees who also work in the IT Department -- telecommunications engineers, design drafters, and construction leads. I&O project managers work closely with telecommunications engineers and design drafters, and are in contact with them on a daily basis. I&O project managers are also in frequent work-related contact with construction leads. The record further reflects that I&O project managers and telecommunications engineers share common management at the Senior Director level.

While employees in the proposed voting group share common benefits and are subject to the same employment policies as unit employees, I find this to be a neutral factor in my determination given that the same can be said for all employees companywide. With respect to overlap between classifications, the record reflects that there are about 190 project managers from various departments in the existing unit, although the record does not disclose details about their functions. Given the diversity of job functions within the existing unit,⁴ I accord little weight to any lack of precise overlap in job skills and functions between the proposed voting group and the existing unit. Based on the substantial functional integration and frequency of contact between I&O project managers and unit employees, their location within the same

³ *Armour & Co.*, 40 NLRB 1333 (1942), and *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

⁴ Union representative Joshua Sperry testified that the existing mixed unit of professional and technical employees includes over 250 classifications. It is noted that the parties' January 1, 2016 through December 1, 2019 collective-bargaining agreement, Exhibit A, pages 87 to 97, lists 314 unit classifications.

department, and their common management at the Senior Director level, I conclude that the petitioned-for voting group shares a community of interest with the existing unit.

I turn next to the question of whether the proposed voting group constitutes a distinct, identifiable segment as required by *Warner-Lambert*, above. The record demonstrates that all IT project managers share common basic terms and conditions of employment. IT project managers share the same pay bands, share the same basic job descriptions and skills, complete the same basic training and certifications; and use much of the same software to perform their job duties. The record also reveals, however, that IT project managers do not share common supervision until the CIO level, while project managers in the I&O subgroup have their own departmental front line supervisors and managers and are commonly managed at a higher level by Director Vana. Furthermore, the record does not reveal regular interchange between I&O project managers and the remaining IT project managers – indeed, the record discloses only two transfers between the I&O subgroup and the other two subgroups. The Employer submitted insufficient evidence to establish functional integration among IT project managers in the various subgroups. Although Director Vana testified that IT project managers and BT project managers sometimes collaborate on the same projects, he provided no testimony to establish the number of employees who have been involved in such collaborations, the percentage of their time spent on such projects, or whether project managers from the various subgroups have any interaction with one another on such occasions. On the contrary, I&O project managers Badalyan and Luna both testified that they do not have any contact with BT or Security project managers. Based on these considerations, I conclude that I&O project managers are sufficiently distinct from the Employer's other IT project managers to constitute a distinct, identifiable segment of the Employer's unrepresented employees.

Upon these facts and the record as whole, I find that the petitioned-for voting group has both the requisite community of interest with the existing unit and a distinctive function and diverse community of interest from the remaining IT project managers necessary for the establishment of a separate voting group under *Warner-Lambert*.

Although the Employer contends that this case should be analyzed under *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), which overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), the Board has indicated that *Specialty Healthcare* was not the correct standard for determining the appropriateness of a self-determination election. See *Republic Services of Southern Nevada*, 365 NLRB No. 145, slip op. at 1, fn. 1 (2017); see also *South Texas Project Nuclear Operating Company Employer*, 2014 WL 5465003 (footnote of Member Johnson finding it inappropriate to apply *Specialty Healthcare* to determine whether a self-determination election is appropriate). Furthermore, the Board in *PCC Structurals* did not overrule or even discuss the appropriateness of the longstanding *Warner-Lambert* test in self-determination elections. Accordingly, I conclude that the standard set forth in the Board's recent decision in *PCC Structurals* does not apply here. Rather, the well-established standard in *Warner-Lambert* controls in this *Armour-Globe* context.

The Employer further argues that the petitioned-for voting group is inappropriate because under *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973), the Board generally favors

systemwide units in the utility industry. However, the Employer's reliance on *Baltimore Gas & Electric Co.* is misplaced for three reasons. First, the Board has recognized that, despite its general preference, each case must nonetheless be judged on its own merits, and where a utility company's operations have created a separate community of interest for certain of the company's employees, a less than systemwide unit may be found appropriate. See e.g., *PECO Energy Co.*, 322 NLRB 1074 (1997); *Idaho Power Co.*, 179 NLRB 22 (1969). Second, the presumption that a systemwide unit is appropriate does not apply in the context of a self-determination election involving an existing nonconforming unit. Indeed, the Board regularly permits portions of a larger unrepresented group of employees to decide whether or not they wish to join an existing nonconforming unit. See e.g., *Arizona Public Service Co.*, 310 NLRB 477 (1993)(Board denied review of the Regional Director's direction of an election among a relatively small segment of the unrepresented employees, appending the Regional Director's Decision outlining the parties' "extensive history going back to 1956 for self-determination elections among groups of employees" to be added to the existing nonconforming unit); *St. Vincent Charity Medical Center*, 357 NLRB 854 (2011)(self-determination election to add phlebotomists to an existing nonconforming unit in acute-care hospital does not run afoul of the Board's Health Care Rule). Finally, the Employer itself does not argue for a system-wide unit, but rather, seeks to fold in two additional subsets of the Employer's project managers from its IT Department into the existing unit.⁵

CONCLUSIONS AND FINDINGS

I have carefully weighed that record evidence and the arguments of the parties, and I conclude that it is appropriate to hold a self-determination election among the employees in the petitioned-for voting group. Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of Section 2(6), (7), and (14) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁶

⁵ While the record does not disclose extensive details about the composition of the bargaining unit, the Employer did not dispute the Petitioner's representation at the hearing that the existing unit is a fractured unit. There is no evidence that an election among the Employer's proposed voting group would bring the existing unit into conformity with the Board's general preference for a systemwide unit.

⁶ The parties stipulated that the Employer, a California corporation with an office and place of business in San Francisco, California, is engaged in the business of providing gas and electric utilities to Northern and Central California. During the past 12 months, the Employer derived gross revenues in excess of \$250,000, and purchased and received goods or services in excess of \$5,000, which originated outside the State of California.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute an appropriate voting group for a self-determination election:

All full-time and regular part-time employees in the Infrastructure and Operations subdivision of the Employer's Information Technology and Supply Chain Department employed in the IT Project Manager Line of Progression, including associates, career, senior, expert, principal and chief, employed by the Employer at its various facilities located in Northern and Central California; excluding employees already represented by a labor organization, non-professional employees, confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Engineers and Scientists of California, Local 20, IFPTE, AFL-CIO/CLC.

A. Election Details

I have determined that a mail ballot election will be held.

The ballots will be mailed to employees employed in the appropriate voting group. At **5:00 p.m. on Monday, March 12, 2018**, ballots will be mailed to voters from the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300N, Oakland, CA, 94612-5224. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Monday, March 19, 2018, should communicate immediately with the National Labor Relations Board by either calling the Region 32 Office at (510) 637-3300, or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be counted at the Regional Office on **Wednesday, March 28, 2018, at 10:00 a.m.** In order to be valid and counted, the returned ballots must be received in the Regional Office by 5:00 p.m. on Monday, March 26, 2018.

B. The Ballot

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by Engineers and Scientists of California, Local 20, IFPTE, AFL-CIO/CLC?" The choices on the ballot will be "Yes" or "No".

If a majority of valid ballots are cast for Engineers and Scientists of California, Local 20, IFPTE, AFL-CIO/CLC, they will be taken to have indicated the employees' desire to be included in the unit described in Exhibit A, pages 87 to 97, of the collective-bargaining agreement between Engineers and Scientists of California, Local 20, IFPTE, AFL-CIO/CLC and the Employer, effective January 1, 2016 through December 31, 2019.

If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

C. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **January 31, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

D. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Thursday, March 1, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

E. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days

February 27, 2018

after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Oakland, California this 27th day of February 2018.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
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